

2 *Conflicts of Interest*

2.1 Legal Division Conflicts Policies and Procedures

FDIC policies and procedures governing Outside Counsel conflicts of interest are found in the "Statement of Policies Concerning Outside Counsel Conflicts of Interest" and "Outside Counsel Conflicts of Interest Procedures" (collectively, "Conflicts Policies and Procedures"). Refer to [Appendices C \(1\) and C \(2\)](#). You should refer to the Conflicts Policies and Procedures, as they may be amended, for specific guidance on conflicts of interest.

2.2 FDIC Regulations and Policies

There are also specific reporting requirements contained in the regulations at 12 C.F.R. Part 366, as amended or superseded. Refer to [Appendix C \(3\)](#). These regulations prescribe minimum standards of fitness and integrity for Outside Counsel and any employees, agents, or subcontractors (such as experts or consultants) who are used to provide professional services on FDIC matters. For representations and certifications required by the FDIC in accordance with 12 C.F.R. Part 366, refer to [Appendix C \(4\)](#).

In addition, you should be cognizant of the requirements of the "Statement of Policy on Contracting with Firms that Have Unresolved Audit Issues with FDIC," 62 Fed. Reg. 13382 (March 20, 1997) (refer to [Appendix C \(5\)](#)), which specifies that Outside Counsel may be deemed to have a conflict of interest as a result of unresolved audit issues with the FDIC.

2.3 Rules of the Legal Profession

You must also observe applicable state bar rules of professional responsibility with respect to conflicts of interest and confidentiality, and the *American Bar Association Model Rules of Professional Conduct* to the extent that these are not contrary to applicable state bar rules.

2.4 Required Disclosures

In general, Outside Counsel must disclose, in writing to the Legal Division, information concerning actual or potential conflicts of interest and matters that may present the appearance of a conflict. Disclosure should be made to the conflicts coordinator in the office or section that is responsible for overseeing your Legal Services Agreement. *Refer to Chapter 3.*

Required disclosures include but are not limited to the following:

- Whether your firm currently represents any interest adverse to the FDIC in any of its capacities, a subsidiary of a failed insured depository institution, or an FDIC bridge bank.
- Whether your firm previously represented an open insured depository institution that subsequently failed or previously represented any interest adverse to such an institution.
- Whether there exists an actual or potential conflict or the appearance of a conflict of interest between your firm and the:
 - Board of Governors of the Federal Reserve System;
 - Office of the Comptroller of the Currency;
 - National Credit Union Administration;
 - Office of Thrift Supervision; or
 - Department of Justice (on matters involving failed insured depository institutions or their directors, officers or related third parties).
- Whether your firm or any attorney of your firm currently has any outstanding debt, whether performing or in default, owed to any failed insured depository institution.

- Whether any attorney of your firm has served or serves as an officer, director or substantial shareholder of any insured depository institution.
- Whether any attorney of your firm has served or serves as a trustee in bankruptcy or as a receiver in any federal or state court or administrative proceeding.
- Whether your firm has represented or represents a debtor-in-possession, trustee in bankruptcy, or a receiver in a proceeding in which the FDIC in any of its capacities has an interest as a creditor or otherwise.
- Whether your firm represents a creditor in a bankruptcy, receivership, or other litigation proceeding where the FDIC in any of its capacities has asserted claims against the same debtor in either the same or an unrelated proceeding.
- Whether your firm represents any insurance carrier or any stockholder or class of stockholders in an action against a director or officer of an insured depository institution.
- Whether your firm represents any insured depository institution in regulatory matters or assistance transactions.
- Whether your firm represents a prospective bidder for a troubled or failed institution or the assets of such an institution.
- Whether your firm represents any officer, director, debtor, creditor, or stockholder of any failed or assisted insured depository institution in a matter relating to the FDIC in any of its capacities.
- Whether any attorney of your firm is closely related to any person employed by the FDIC, is in litigation with the FDIC in any of its capacities, has outstanding debt owed to any failed depository institution or an ownership interest in such an institution. This includes spouse, dependent child or member of the immediate household.

- Whether your firm or any attorney of your firm has been or is currently subject to any prior or pending claims or investigations by the FDIC in any of its capacities.
- Whether your firm or any management official of your firm has been charged with the commission of a felony or is currently a party to an administrative or judicial proceeding in which fraudulent activity is alleged.

2.5 Duty to Disclose at Application and Thereafter

At the time of application, the Legal Division requires that you disclose all actual or potential conflicts of interest and matters that may present the appearance of a conflict. You are also required at the time of application to comply with the requirements of 12 C.F.R. Part 366. Information about your system for tracking conflicts and your policy regarding the resolution of conflicts must also be provided.

After application, you must disclose in writing all actual or potential conflicts and matters that may present the appearance of a conflict to the Legal Division as soon as you learn of their existence. When in doubt about the existence of a conflict, you should nevertheless disclose the matter and seek a waiver. Even after a conflict has been reported or a waiver granted, you must notify the Legal Division of any material change in facts.

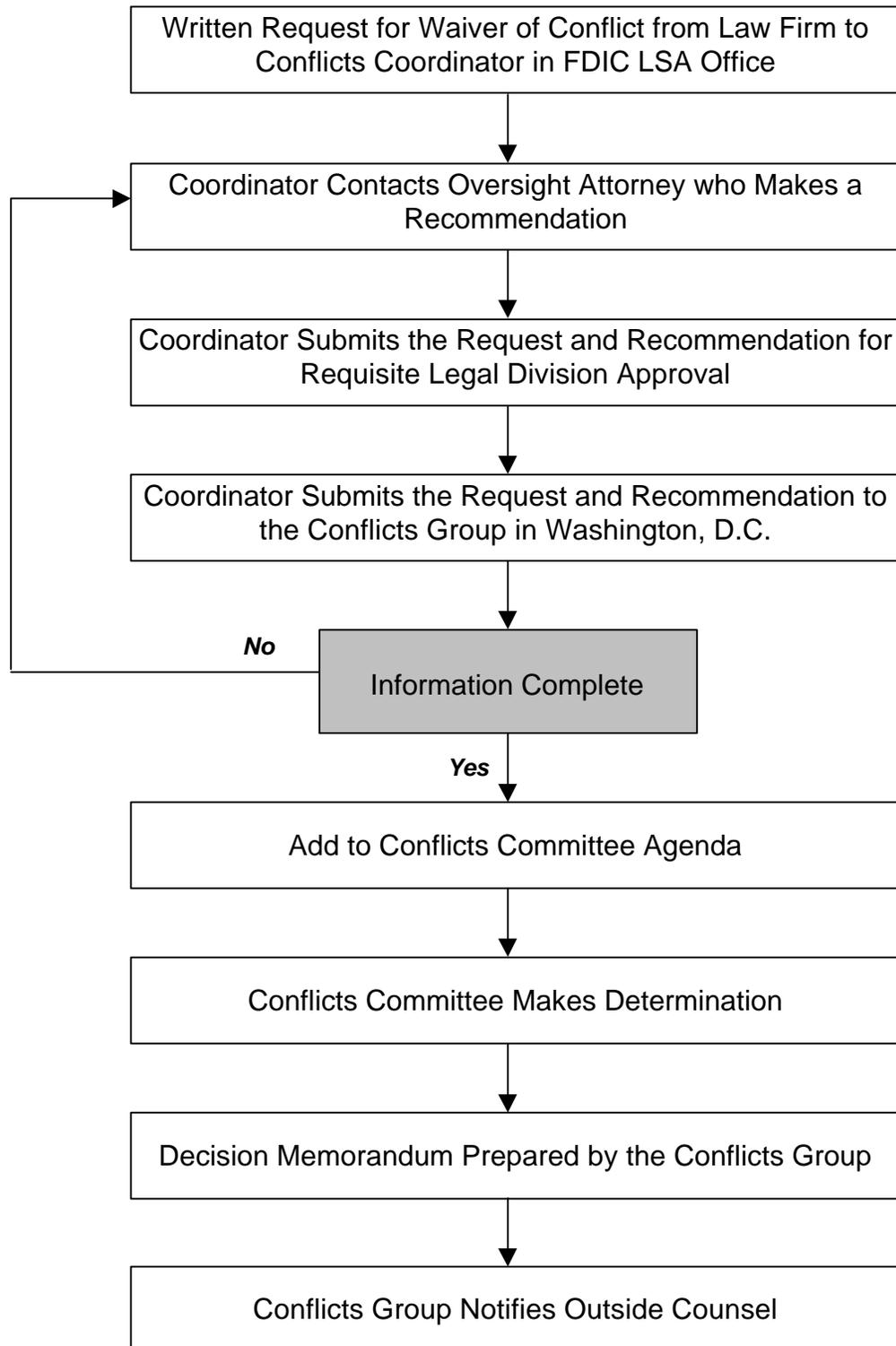
2.6 Conflict Determination

It is solely within the discretion of the Legal Division to determine whether an actual or potential conflict exists. Moreover, even the appearance of a conflict may result in the denial of a waiver or imposition of other corrective actions.

Conflicts of interest may only be waived by the Legal Division in writing. Generally, requests for waivers of conflicts of interest are granted or denied on behalf of the FDIC by the FDIC Outside Counsel Conflicts Committee in Washington, D.C.

Requests for waivers are considered only on a case-by-case basis. The waiver request process is illustrated in the following flow chart.

Conflict of Interest Waiver Request Process



2.7**Noncompliance**

Failure to disclose promptly actual or potential conflicts of interest, or matters that may present the appearance of a conflict, as well as failure to comply with FDIC's conflicts of interest policies and procedures may result in the following:

- Imposition of a bar to application;
- Termination of your legal services;
- Suspension of new referrals;
- Disallowance in whole or in part of fee bill(s) for services rendered;
- Denial of a conflict waiver; or
- Other corrective actions, including referral to the appropriate state licensing authorities or civil or criminal actions.

You are not permitted to go forward with a representation adverse to the FDIC until the conflict has been waived or the situation otherwise resolved to the satisfaction of the Legal Division.

In the event your legal services are terminated, you must follow FDIC policies and procedures, return all files, and otherwise cooperate fully in the orderly transfer of matters as the Legal Division directs.

**2.8
FDIC as a Former
Client**

You have the continuing responsibility to report in writing any actual or potential conflict of interest or appearance of a conflict, regardless of whether you are representing the FDIC on active matters at the time of discovery.

Note that in the event you no longer represent the FDIC, you may not without a waiver later represent another client against the FDIC in a matter substantially related to any matter in which you previously represented the FDIC.

You are also expected to observe all requirements of attorney-client confidentiality after the conclusion of any FDIC representation. *Refer to Chapter 9.*

**2.9
Questions
Concerning
Conflicts**

For information, contact the Outside Counsel Liaison in Washington, D.C., at (800) 846-1901.

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